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STAAS & HALSEY LLP
700 11TH STREET, NW
SUITE 500
WASHINGTON DC 20001

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**OFFICE OF PETITIONS
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In re Application of :
Soon Sun Shim :
Application No. 09/679,896 :
Filed: October 5, 2000 :
Attorney Docket No. 1293.1143RE/MDS :

ON PETITION

This is a decision on the "Petition to Commissioner," filed November 14, 2000, which is being treated as a request under 37 CFR 1.183 to suspend 37 CFR 1.174(a) where it requires that "when the reissue application is filed, the applicant must submit a temporary drawing."¹

The petition is granted.

The instant reissue application was filed without drawings, but did include a request to transfer drawings from the patented file. However, 37 CFR 1.174(a), the rule in effect at the time the application was filed, required the submission of a temporary drawing.

On November 6, 2000, a Notice of Incomplete Reissue Application (hereafter Notice) was mailed stating that no filing date had been accorded to the instant application because the application was deposited without drawings. The petition and accompanying formal drawings were timely tendered in reply to the Notice of November 6, 2000. Petitioner asserts that the reissue transmittal sheet indicated that the USPTO should transfer the drawings from the patent file. Petitioner further indicates that the drawings are not necessary for the understanding of the subject matter sought to be patented. However, petitioner requests that the drawings submitted with the petition be allowed and that the filing date of October 5, 2000 be accorded the instant application.

¹ 37 CFR 1.174 has now been removed and reserved; 65 FR 54604, Sept. 8, 2000, effective November 7, 2000. Note new rule 37 CFR 1.173(a)(3).

35 USC 111(a)(2)(A) (and therefore 35 USC 251) requires that a complete application shall include "a drawing as prescribed by section 113 of this title." While petitioner concedes that drawings *per se* were not included with this application as filed, nevertheless, (1) as filed, the transmittal letter requested transfer of the drawings from the patent file, and (2) the drawings were contained in the original Letters Patent, and, as such, were on file with the Patent and Trademark Office on the date the above-captioned application papers for reissue of the above-noted patent were deposited. As such, on petition, this reissue application, as filed, is considered to have included "a drawing" within the meaning of the statutes and regulations, for purposes of obtaining, and retaining, a filing date.

So construed, the instant petition is being treated as a request to waive, under the extraordinary circumstances of this case, the regulations where they require that a reissue application include, when filed, a temporary drawing. As petitioner has supplied formal drawings with the petition, the delay in submission of the temporary drawings can be, on petition, excused. Further in this regard, the petition also constitutes an acceptable reply to the Notice of November 6, 2000.

This reissue application is being returned to the Office of Initial Patent Examination Division for processing with an indication that drawings were present on filing, using the formal drawings filed on November 13, 2000, and with a filing date of October 5, 2000.

Telephone inquiries related to this decision should be directed to Frances Hicks at (703) 305-8680.



Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy